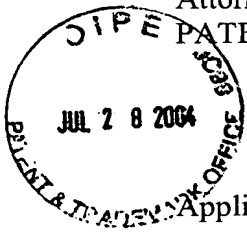


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Attorney Docket No: 20341/67618



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: James M. KAIN

Serial No.: 09/871,199

Art Unit: 3636

Filed: May 31, 2001

Examiner: Joseph F. Edell

For: JUVENILE SEAT ARMREST

REVISED APPEAL BRIEF

**(No fee due since the fee was paid with the first Brief on Appeal)
(In Response to Notice of Noncompliance of July 1, 2004)**

Mail Stop Appeal Briefs - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

A Final Rejection of all Claims 1-31, was issued October 8, 2002. A telephonic interview occurred December 3, 2002 and a personal interview was conducted on January 6, 2003. A Request for Reconsideration was filed January 7, 2003 and an Advisory Office Action was issued January 23, 2003. A Notice of Appeal and Petition for Extension of Time were filed in the U.S. Patent and Trademark Office, on February 4, 2003.

1) Real Party in Interest:

This Application has been assigned to Cosco Management, Inc., a Delaware corporation and a subsidiary of Dorel Juvenile Group, a corporation of Massachusetts.

2) Related Appeals and Interferences:

Applicants know of no related appeals on interference.

3) Status of Claims:

The Application contains Claims 2-31.

Claims 2, 3, 6-12, 25 and 27-29 stand rejected as being unpatentable over Lemmeyer (U.S. Patent No. 6,478,372) in view of Kaufman (U.S. Patent No. 364,519) under 35 U.S.C. §103(a).

Claims 4,5, 30 and 31 stand rejected as being unpatentable over Lemmeyer (U.S. Patent No. 6,478,372) in view of Kaufman (U.S. Patent No. 364,519) under 35 U.S.C. 103(a).

Claims 13-24 and 26 stand rejected as being unpatentable over Lemmeyer (U.S. Patent No. 6,478,372) in view of Kaufman (U.S. Patent No. 364,519) in further view of Walker (U.S. Patent No. 3,279,848) under 35 U.S.C. §103(a).

4) Status of Amendments

An Amendment is filed (after Appeal) herewith to correct an error in dependency of claims 10 and 13 which previously depended from claim 1, but which had not had their dependency changed when claim 1 was cancelled and incorporated into claim 2.

5) Summary of the Invention

The invention relates to a Juvenile Vehicle Seat Assembly comprising a seat bottom 24 (see Figure 1) and a seat back 14. A cantilevered armrest 10 projects from outer ridges 16 and 18 of the seat back 14 and is bolted thereto by two bolt assemblies 88 and 89, (as shown in Figure 2). As can be seen in Figure 1, the seat ridges 16 and 18 project forwardly, and are somewhat rounded in cross-section facing the front to permit upper and lower wings 77 and 78 (see Figure 2) of the cantilevered armrest 10 to wrap around these edges, (as shown in Figure 4). The first fastener 88 is located at a position above the top surface 62 of the arm 10 and the second fastener 89 is located below the top edge surface 62 of the arm 10. The upper and lower wings 77 and 78 of the arm 10, define a support mount 12 for the cantilevered arm 10. The arm 10 has the shape of an inverted U, and has two inner panels 65 (see Figure 3), towards its outer free end 66 and an inner load support panel 67 which blocks movement of the arm 10 about pivot axis 85 of the upper fastener 88.

It can be thus seen that Applicant has provided a cantilevered arm 10, which has a free end 66 and which arm projects from a seat back and is supported at only one end to the seat back by fasteners 88 and 89.

6) Issues on Appeal

Whether Claims 2,, 3, 6-12, 25 and 27-29 would be obvious over Lemmeyer (U.S. Patent No. 6,478,372) in view of Kaufman (U.S. Patent No. 364,519) under 35 U.S.C. §101(3a).

Whether Claims 4, 5, 30 and 31 would be obvious over Lemmeyer (U.S. Patent No. 6,478,372) in view of Kaufman (U.S. Patent No. 364,519) under 35 U.S.C. §103(a).

Whether Claims 13-24 and 26 would be obvious as unpatentable over Lemmeyer (U.S. Patent No. 6,478,372) in view of Kaufman (U.S. Patent No. 364,519) and in further view of Walker (U.S. Patent No. 3,279,848) under 35 U.S.C. §103(a).

7) Grouping of Claims

The claims of the groups do not stand or fall together.

The Examiner's Grouping of the Claims is correct except that Claim 2 should be grouped separately from the rejection of Claims 6-12, 25 and 27-29, since Claims 3, 9, 11 and 27-29 require the second fastener to be below the arm and claims 6-8, 10, 12 and 25-26 claim only one fastener, whereas Claim 2 only requires it to be below the first fastener. Also Claims 13-14, 17 and 26 should be grouped differently from Claims 15-16 and 18-24, since these claims require the load support panel to be in a fixed position relative to the arm whereas Claims 15-16 and 18-24 do not.

8) Copy of the Claims

A copy of the Claims on appeal appear in the attached Appendix.

9) Argument

The patent to Lemmeyer et al. ('372) shows (Fig. 1) a cantilevered arm 16 provided with a U-shaped grove 101 at its rear end (see Fig. 1(b) which is attached to the sides of the backrest of the seat. Fig. 1(a) shows the attachment points as comprising shelves 112 and 114 which are generally horizontal and a tongue 110 inserted into the shells and wherein the tongue has flat sides 102. The U-shaped grove fits around the tongue 110 and its upper and lower surfaces keep the cantilevered arms from moving vertically while the sides of the U against the tongue 110 keep the cantilevered arms moving from side to side. The cantilevered arm is bolted to the tongue which has two slots 122, which cooperate with slots 120 into which bolts are placed. It should be noted that the back end of the cantilevered arm around the U-shaped grove 100 has a top surface co-planer with the top surface of the cantilevered arm and a bottom surface co-planer with the bottom of the cantilevered arm and wherein the bolt locations 120 are located on the arm one below the top surface and one above the bottom surface.

Kaufman ('519) shows a non-cantilevered arm at (A) (see Fig. 3) with an extension (a) of the arm extending above and below the top and bottom surface respectfully of the top portion (A) arm itself. A series of spokes B are located between the arm and the bottom of the seat. Thus, the Kaufman arm is not a cantilevered arm and has three bolt areas at (b), three at bolt area (c) and two at bolt area (a) so as to be attached to the seat along eight different portions.

The Examiner has rejected claims 2, 3, 6-12, 25 and 27-29 as being unpatentable over Lemmeyer ('372) in view of Kaufman ('591) under 35 U.S.C. 103(a). It is the Examiner's position that it would be obvious to extend the height of the U-shaped groove to a point above the top of the cantilevered arm of Lemmeyer and below the arm of Lemmeyer in view of the teaching of Kaufman. There is no advantage in extending the backside U-shaped portion of the cantilevered arms of Lemmeyer upwardly and downwardly from its cantilevered arms so as to allow for the upper bolt to be above the top of the armrest and the lower bolt to be below the armrest. Since Lemmeyer has the flat surfaces of his U-shaped rear end, co-planar with the surfaces of the shelves 112 and 114 to prevent vertical movement, the need for and desirability of extending the end of the portions of the U-shaped groove upwardly and downwardly provide for no utility or reason. One skilled in the art would not even consider the Kaufman raising and lowering portions of his vehicle seat arm to be desirable or useful in the device of Lemmeyer. This is especially true since the extended portions of Kaufman bolt directly to the back and do not bolt to the side of the seat and therefore, the holes 122 of Lemmeyer would have to be in the seat back and not on the tongue which would not be as secure a mounting and advantageous as that shown by Lemmeyer. It is applicant who teaches why you should have the extended support mounts above and below the arm, since the rigidity in the vertical and horizontal directions for applicant's cantilevered arms is caused by these extended mounting bracket areas. There is no teaching in the prior art for one skilled in the art to make the modification proposed by the Examiner and such is rather illogical considering the structure of Lemmeyer and can only be considered a "hindsight" reconstruction of Lemmeyer to meet applicant's claimed terms and as such, is improper under 35 U.S.C. 103. This reconstruction of Lemmeyer is but the classic quote "hindsight" type of rejection long condemned as not in accord with 35 U.S.C. 103. Hence, this rejection should be summarily reversed.

Claims 4, 5, 30 and 31 were also rejected as being unpatentable over Lemmeyer in view of Kaufman under 35 U.S.C. 103. Claims 4 and 5 reference the form of the fastener where one is longer than the other and where one includes a barrel having a first end and an opposite threaded open end (claims 30 and 31 are similar). The Examiner proffers it would be obvious matter of design choice to provide for such a construction and offers no teaching whatsoever as to why one would provide such a structure. Without a teaching reference, the Examiner's assertion is just a bold unsupported allegation not sufficient to support an obvious rejection. Still further, the need for such a type of longer and shorter bolt in Lemmeyer is not proper since the thicknesses of the tongue 110 are the same. Applicant's thicknesses diverge and therefore a longer bolt is needed. Accordingly, the honorable board should summarily reverse this rejection.

The Examiner has rejected claim 13-24 and 26 similarly as claims 2, 3, 6-12, 25 and 27-29 above in further view of Walker ('848) under 35 U.S.C. 103(a). It is the Examiner's position that it

would be obvious to add the Walker load support 49 to block pivotal movement of the armrest of Lemmeyer. Since the armrest of Lemmeyer are not pivotable, there is no need for the support panel 49 of Walker in the combination. This is especially true since the shelves 112 and 114 of Lemmeyer will keep the arms from rotating and thus one is hard pressed to find any reason to provide for the Walker support panel 49. Again, this is but a "hindsight" rejection which is improper under 35 U.S.C. 103 since no one skilled in the art deemed it worthy of adoption under the advice of Lemmeyer which is a better system for stopping rotation. Further panel 49 is not on the arm as claimed, but rather is on the support and there is no teaching presented to move its location to the arm as claimed. Accordingly, this honorable board should summarily reverse this rejection.

The above grouping of the claims has separable patentability features since the location of the second fastener is independent of the location of the first fastener and is a patentable feature in and of itself.

SUMMARY

In view the above, this honorable board is requested to reverse the Examiner's final rejection.

FEE

No Appeal Brief fee is due since the fee was paid with first Appeal Brief. If a fee is due, authorization to charge the deposit account of Barnes & Thornburg No. 02-1010 (20341-67618) is hereby granted.

Respectfully submitted,

BARNES & THORNBURG



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ATTACHMENT

1. (Canceled)
2. (Previously Amended) A juvenile vehicle seat assembly comprising
a seat including a seat bottom and a seat back,
a cantilevered armrest projecting from the seat back, the cantilevered armrest including an arm having a free end, a top surface and a support mount appended to the arm and coupled to the seat back to support the arm in a cantilevered position, and
a first fastener coupled to the support mount and seat back to maintain the arm in the cantilevered position, the first fastener being arranged to lie above the top surface of arm to cause the arm to lie between the first fastener and the seat bottom when the arm is in the cantilevered position, and further comprising a second fastener coupled to the support mount and seat back and arranged to lie between the first fastener and the seat bottom.
3. (Original) The assembly of claim 2, wherein the arm includes a top surface adapted to support a forearm of an occupant of the seat and a lower edge positioned to lie below the top surface and in spaced-apart relation to the seat and the second fastener is arranged to lie below the lower edge and above the seat bottom.
4. (Original) The assembly of claim 2, wherein the first fastener has a first length and the second fastener has a second length longer than the first length.
5. (Original) The assembly of claim 2, wherein each fastener includes a barrel having a first end and an opposite threaded opened end, an enlarged head coupled to the first end, and a screw threaded to fit in and mate with the threaded opened end of the barrel to couple the support mount to the seat back.
6. (Previously Amended) A juvenile vehicle seat assembly comprising
a seat including a seat bottom and a seat back,
a cantilevered armrest projecting from the seat back, the cantilevered armrest including an arm and a support mount appended to the arm and coupled to the seat back to support the arm in a cantilevered position,
a first fastener coupled to the support mount and seat back to maintain the arm in the cantilevered position, the first fastener being arranged to lie above the arm to cause the arm to lie between the first fastener and the seat bottom, and
wherein the support mount includes an inner flange coupled to the arm and an outer flange coupled to the arm and positioned to lie in spaced-apart relation to the inner flange to receive a ridge of the seat back in a U-shaped channel formed in the support mount between the inner and outer flanges.

7. (Original) The assembly of claim 6, wherein each flange is formed to include an upper wing rising above the arm and away from the seat bottom and the first fastener is coupled to the upper wing of each flange.

8. (Original) The assembly of claim 7, wherein the ridge of the seat back received in the U-shaped channel is formed to include a fastener aperture, each upper wing is formed to include a fastener aperture, and the first fastener is arranged to extend through the fastener apertures formed in the ridge of the seat back and each upper wing.

9. (Previously Amended) The assembly of claim 7, wherein each flange is formed to include a lower wing extending below the arm and toward the seat bottom and a second fastener is coupled to the lower wing of each flange.

10. (Previously Amended) A juvenile vehicle seat assembly comprising
a seat including a seat bottom and a seat back,
a cantilevered armrest projecting from the seat back, the cantilevered armrest including an arm having a free end, a top surface and a support mount appended to the arm and coupled to the seat back to support the arm in a cantilevered position, and
a first fastener coupled to the support mount and seat back to maintain the arm in the cantilevered position, the first fastener being arranged to lie above the top surface of arm to cause the arm to lie between the first fastener and the seat bottom when the arm is in the cantilevered position, and wherein the support mount includes a flange coupled to the arm and formed to include an upper wing rising above the arm and away from the seat bottom and the first fastener is coupled to the upper wing.

11. (Previously Amended) The assembly of claim 10, wherein the flange is formed to include a lower wing extending below the arm and toward the seat bottom and a second fastener is coupled to the lower wing.

12. (Original) The assembly of claim 10, wherein the upper wing is formed to include a fastener aperture, a ridge of the seat back positioned to lie adjacent to the upper wing is formed to include a fastener aperture, and the first fastener is arranged to extend through the fastener apertures formed in the ridge of the seat back and the upper wing of the flange of the support mount.

13. (Previously Amended) A juvenile vehicle seat assembly comprising
a seat including a seat bottom and a seat back,
a cantilevered armrest projecting from the seat back, the cantilevered armrest including an arm having a free end, a top surface and a support mount appended to the arm and coupled to the seat back to support the arm in a cantilevered position, and
a first fastener coupled to the support mount and seat back to maintain the arm in the cantilevered position, the first fastener being arranged to lie above the top surface of arm to

cause the arm to lie between the first fastener and the seat bottom when the arm is in the cantilevered position, and wherein the cantilevered armrest further includes a load support panel arranged to lie in a fixed position relative to the arm and the support mount and to engage a ridge of the seat back to block pivotable movement of the cantilevered armrest toward the seat bottom about a pivot axis established by the first fastener.

14. (Original) The assembly of claim 13, wherein the support mount includes an inner flange coupled to the arm and an outer flange coupled to the arm and positioned to lie in spaced-apart relation to the inner flange to receive a ridge of the seat back in a U-shaped channel formed in the support mount between the inner and outer flanges and the load support panel includes a lower edge positioned to engage the ridge of the seat back and lie in a position between the inner and outer flanges of the support mount.

15. (Previously Amended) A juvenile vehicle seat assembly comprising
a seat including a seat bottom and a seat back having a side ridge facing forwardly toward the seat bottom,

a cantilevered armrest including a rearwardly facing support mount, an arm having a free end and a top surface, the support mount being appended to the arm and extending above the top surface of the arm for receiving the forwardly facing side ridge of the seat back therein, and a load support panel arranged to abut the seat back to block pivotable movement of the cantilevered arm relative to the seat back, and

a retainer coupled to a portion of the support mount and the seat back to maintain the arm in a cantilevered position.

16. (Previously Amended) The assembly of claim 15, wherein the support mount includes an inner flange and an outer flange positioned to lie in a spaced-apart relation to the inner flange and both inner and outer flanges are positioned to lie against the side ridge.

17. (Previously Amended) The assembly of claim 15, wherein the load support panel is arranged to lie in a fixed position relative to the arm and the support mount and to abut the forwardly facing side ridge of the seat back to block pivotable movement of the cantilevered armrest toward the seat bottom about a pivot axis established by a first fastener of the retainer.

18. (Previously Amended) The assembly of claim 16, wherein the side ridge of the seat back further includes inner and outer panels and the inner and outer flanges have upper wings, one upper wing is positioned to lie against a portion of the inner panel above the arm, and another upper wing is positioned to lie against a portion of the outer panel above the arm.

19. (Previously Amended) The assembly of claim 18, wherein the retainer includes a first fastener and a second fastener, and the first fastener couples the upper wings to the inner panel and the outer panel of the side ridge at the position above the arm.

20. (Original) The assembly of claim 16, wherein the inner and outer flanges includes lower wings, one lower wing is positioned to lie against a portion of the inner panel below the arm, and another lower wing is positioned to lie against the outer panel below the arm.

21. (Original) The assembly of claim 15, wherein the retainer includes a first fastener which couples the support mount to the seat back above the arm.

22. (Original) The assembly of claim 15, wherein the retainer includes a second fastener which couples the support mount to the seat back below the arm.

23. (Original) The assembly of claim 15, wherein the support mount is formed to include a U-shaped channel which is positioned to lie above the arm.

24. (Original) The assembly of claim 23, wherein the U-shaped channel mates with the side edge above the arm.

25. (Previously Amended) A juvenile vehicle seat assembly comprising
a seat including a seat bottom and a seat back having a side edge facing forwardly toward the seat bottom,

a cantilevered armrest including a free end, a top surface and support mount formed to include a rearwardly facing U-shaped channel receiving the forwardly facing side edge of the seat back therein and an arm appended to the support mount, and

means for fastening the support mount to the seat back to support the arm in a cantilevered position, the fastening means including a first fastener positioned to lie above the top surface of the arm and a second fastener positioned to lie below the arm.

26. (Original) The assembly of claim 25, wherein the cantilevered armrest further includes a load support panel arranged to lie in a fixed position relative to the arm and the support mount and to abut the forwardly facing side edge of the seat back to block pivotable movement of the cantilevered armrest toward the seat bottom about a pivot axis established by the first fastener.

27. (Previously Amended) A juvenile vehicle seat assembly comprising
a seat including a seat bottom and a seat back,
a cantilevered armrest including an arm having a free end, a top surface and a support mount appended to the arm, the support mount including an upper wing rising above the top surface arm and away from the seat bottom and a lower wing extending below the top surface of arm and toward the seat bottom, and

means for fastening the support mount to the seat back to support the arm in a cantilevered position, the fastening means including a first fastener coupled to the upper wing and the seat back and a second fastener coupled to the lower wing and the seat back.

28. (Original) The assembly of claim 27, wherein the upper wing is formed to include a fastener aperture, the seat back is formed to include a fastener aperture, and the first fastener is arranged to extend through fastener apertures formed in the upper wing and seat back.

29. (Original) The assembly of claim 27, wherein the lower wing is formed to include a fastener aperture, the seat back is formed to include a second fastener aperture, and the second fastener is arranged to extend through the fastener aperture formed in the lower wing and the second fastener aperture formed in the seat back.

30. (Original) The assembly of claim 27, wherein each fastener includes a barrel having a first end and an opposite threaded opened end, an enlarged head coupled to the first end, and a screw threaded to fit in and mate with the threaded opened end of the barrel to couple the support mount to the seat back.

31. (Original) The assembly of claim 27, wherein the first fastener has a first length and the second fastener has a second length longer than the first length.